

\*\*E-Filed 3/16/10\*\*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

C&C JEWELRY MFG., INC.,

Plaintiff,

v.

TRENT WEST,

Defendant.

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And Related Counter Claims

Case No. 09-1303-JF (HRL)

ORDER REQUESTING FURTHER  
BRIEFING

[re: document no. 52]

In anticipation of the claim construction hearing in the instant case, the Court hereby requests supplemental briefing with respect to whether a “to provide clause”, such as that found in claim 10 of the ‘314 patent and claim 11 of the ‘974 patent, should be construed as a “whereby clause” under *Hoffer v. Microsoft Corp.*, 405 F.3d 1326 (Fed. Cir. 2005) (finding that “a whereby clause in a method claim is not given weight when it simply expresses the intended result of a process step positively recited”, except “when the ‘whereby’ clause states a condition that is material to patentability”) (internal citation and quotation marks omitted). The parties’ supplemental briefs, which shall not exceed five (5) pages in length, shall be filed on or before March 24, 2010.

1 IT IS SO ORDERED.

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3 DATED: 3/16/ 2010  
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7 JEREMY FOGEL  
8 United States District Judge  
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